

# News from Ed Markey

**United States Congress**

**Massachusetts Seventh District**

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## **MARKEY ASKS GAO TO INVESTIGATE DOE REIMBURSEMENT OF CONTRACTOR LEGAL COSTS**

**Washington, DC** – Representative Edward J. Markey (D-MA), a senior Member of the Energy and Commerce Committee, today released a letter to the General Accounting Office (GAO) requesting that it conduct a study of the process by which the Department of Energy (DOE) chooses to reimburse its contractors for legal costs.

“I am concerned that U.S. taxpayers may be paying for millions of dollars of DOE laboratory contractors’ legal costs, even when the legal activities undertaken are frivolous or unnecessary,” said Rep. Markey.

According to previous GAO correspondence, there have been more than 2,100 cases involving various types of legal complaints against DOE contractors from fiscal year 1995 through the third quarter of fiscal year 2001. In that timeframe, DOE has reimbursed its contractors more than \$290 million for litigation and disposition costs, while the contractors have spent only about \$13 million in their own defense – a more than 95% reimbursement rate. For example, the University of California was reimbursed for almost \$55 million worth of legal costs during that time period, Lockheed Martin Energy Systems received more than \$29 million, Dow Chemical received almost \$26 million, and Westinghouse Savannah River received more than \$27 million.

While DOE has reportedly issued guidelines on what constitutes “reasonable” legal costs, it is not clear whether those guidelines are applied appropriately or consistently. For example, recent press accounts have detailed a case in which Lawrence Livermore National Laboratory (LLNL) was ordered by a jury to pay \$1 million in damages to Ms. Dee Kotla, who sued the lab for wrongful termination. Ms. Kotla alleged that she was retaliated against and ultimately fired by LLNL in 1997 because she testified at a sexual harassment trial involving other LLNL personnel. LLNL reportedly said it fired Ms. Kotla for misuse of her computer and her telephone. However, according to the reports, Ms. Kotla only had \$4.30 in local telephone charges, and said that her use of her computer was minimal. The case took 5 years to resolve. According to DOE, it has reimbursed more than \$400,000 in the Kotla case, and may reimburse additional costs before it is fully resolved.

The letter released by Rep. Markey asks the GAO to determine whether DOE is implementing its guidelines for reimbursement of contractor legal costs in a consistent and proper fashion, and to compare the process by which DOE decides whether to reimburse its contractors with that used by other Federal Agencies and the private sector. The letter also requests an analysis of whether DOE contractors who are also State entities (such as the University of California) are attempting to avoid litigation or certain remedies (such as having to pay punitive damages) by asserting claims of sovereign immunity, even though their legal costs are being reimbursed by federal taxpayer dollars.

“I am concerned that if DOE fails to adequately assess the merits of the legal cases to which its contractors are a party, and reimburses them indiscriminately, DOE contractors will have no incentive to settle cases that are either frivolous or in which they are in the wrong. This will result in years of frustration and burdensome legal expenses for whistleblowers such as Ms. Kotla and other entities involved in legal actions with DOE contractors. It is also a waste of taxpayer funds,” said Rep. Markey.

Copies of all correspondence can be found at [www.house.gov/markey](http://www.house.gov/markey)

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